UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NORTH AMERICAN SOCCER LEAGUE, LLC, Plaintiff, -against- UNITED STATES SOCCER FEDERATION, INC., and MAJOR LEAGUE SOCCER, L.L.C., Defendants.	:	17-CV-5495(HG) United States Courthouse Brooklyn, New York December 5, 2024 11:00 a.m.

TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING
BEFORE THE HONORABLE HECTOR GONZALEZ
UNITED STATES DISTRICT JUDGE
(Via Telephone)

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(Via telephone conference.)

THE COURT: This is a Civil Cause For a Telephonic Motion Conference, docket number 17-CV-5495, *North American Soccer League versus United States Soccer Federation, et al.*

Will the parties please state their appearances for the record, starting with plaintiff.

MR. C. PEARSON: Good morning, Your Honor.

Clifford Pearson, Pearson Warshaw, for NASL.

MR. M. PEARSON: Matthew Pearson from Pearson Warshaw on behalf of NASL.

MR. BUONANOCE: Adrian Buonanoce from Pearson

Warshaw on behalf of NASL.

THE COURT: Okay. Anyone else? Special.

MS. COLE: Eva Cole, Your Honor, from Winston & Strawn on behalf of NASL.

Good morning.

THE COURT: All right. Anyone else for plaintiff?

All right. Let's go with U.S. Soccer, please.

MR. YATES: Good morning, Your Honor.

It's Chris Yates from Latham & Watkins for defendant United States Soccer Federation. I have with me Lawrence Buterman, Anna Rathbun, and David Johnson.

THE COURT: All right. Good morning, all.

And from MLS, please?

MR. RUSKIN: Good morning, Your Honor.

It's Brad Ruskin from Proskauer. With me I have Kevin Perra, Scott Eggers, and there may be one or two other of our colleagues on the phone.

THE COURT: All right. Thank you, Mr. Ruskin.

So at the outset, let me just remind everyone on the line, including any nonparties, that any audio recordings of these proceedings by anyone other than the Court is strictly prohibited by Local Civil Rule 1.8. Let me also stress that violations of this rule may result in sanctions, including the removal of court-issued media credentials, restricted entry to future hearings, denial of

entry to future hearings, or other appropriate sanctions. Obviously this hearing is being transcribed, as usual, by a court reporter and the parties can request a transcript, which I understand already has been done.

And then the other thing, since I have no way of muting folks, unless you need to raise a question, if everyone can please mute their phones while I'm issuing the decision.

All right. So thank you, everyone, for getting on the phone. We're here today so I can give the parties my ruling on their motions in limine. Plaintiff's motions in limine were filed on November 4th of this year and docketed at Docket No. 455-1. Defendants filed an opposition on November 18th, and that's at Docket No. 465-1. Defendants, likewise, filed motions in limine on November 4th at Docket No. 454-1. And plaintiffs opposed those motions on November 18th, and that was filed at Docket No. 463-1.

One quick administrative note before I give my rulings. I'm going to grant the sealing motions associated with the briefing for the issues addressed in this order, and the parties don't need to refile any of those papers.

So now let me turn to the parties' motions in limine. I'm going to take plaintiff's motions in limine first, and I'm going to do those in the roman numeral order in the motion. And then I'm going to turn to defendants and

do those in order, with one exception. I'm going to deal with defendants' I believe it's Motion II which deals with whether a witness was properly noticed. I'll deal with that one at the same time I deal with the related motion from plaintiffs.

So Plaintiff's I seeks to exclude evidence or arguments regarding alleged litigation funding and the distribution and impact of any damages award. I'm going to grant this motion in part and deny it in part.

So the first thing is based on Footnote 10 of the opposition, it appears that the motion is moot with respect to any argument about plaintiff's contingency fee arrangement, which defendants indicate they do not intend to raise.

With respect to the remainder of the motion, I agree, consistent with my order in the last round of in limine motions, that defendants cannot argue that a damages award would harm them or their ability to carry out socially-beneficial activities. The risk of unfair prejudice and confusion of the issues substantially outweigh any arguably probative value these arguments may have.

I am, however, denying the motion to the extent that plaintiff seeks to exclude references to the litigation funding agreement and Mr. Commisso's financial interest in the case. This is important evidence of the witness's

potential bias and goes to his credibility. So I don't think any prejudice is unfair, and certainly not outweighed by the substantial probative value of this evidence. Because Mr. Commisso's role in this case is different from a classic third-party funder, this situation is different than what was highlighted in the *Carroll* case, where such evidence is generally not relevant and/or unduly prejudicial.

I also disagree with plaintiff's claim that bias can be established through other means. Money is an important and often the most important motivator. The evidence, therefore, has substantial probative value, and unlike, again, in the *Carroll* case which involved a more complicated fact pattern, I see no risk of a collateral dispute emerging on this issue.

So that's my ruling on Motion I.

Let me turn now to Plaintiff's II, which seeks to preclude defendants from referencing the preliminary injunction decision and the Court's dismissal of Count One at summary judgment. Again, I'm going to grant this motion in part and deny it in part.

On November 12th, earlier this year, I so ordered the parties' stipulation in which they agreed that they would not refer to or discuss the Court's decision on the motions for summary judgment at trial. So the portion of

plaintiff's motion seeking to preclude reference to the dismissal of Count One is, therefore, moot.

With respect to the PI, or preliminary injunction portion of the motion, I am aware that courts in this circuit often exclude reference to PI proceedings as unduly prejudicial under Rule 403. Accordingly, defendants may not reference the PI decision or suggest that the Court has already reached a conclusion about the merits of plaintiff's claims, except that if plaintiff introduces at trial the letters of intent that were attached to the declaration that Mr. Commisso submitted in connection with the PI motion, or elicits testimony about those letters of intent from any witness, or to the extent that plaintiff's damages calculations are based on fees it would have received from teams that submitted letters of intent in connection with the PI motion, then defendants will be permitted to reference the PI motion and its timing, without referencing the outcome of the PI motion, as necessary to give the jury a full understanding of when and why the letters were generated within the broader context of the litigation. I find that the use by plaintiff of these letters at trial without proper context would lead to jury confusion and would unduly prejudice defendants' ability to rebut this line of evidence.

That concludes my ruling on Plaintiff's II.

Let me turn now to Plaintiff's III, which seeks to preclude defendants from arguing any procompetitive justifications for their conduct not supported by expert testimony or allegedly invalid under governing law. In this section of the motion, plaintiff asks me to preclude defendants from pursuing five specific lines of argument related to procompetitive justifications for their conduct. I'm largely denying this motion, but I'll address each specific line of argument separately to explain my holding.

Within Motion III, so this is III, the first category seeks to preclude defendants from arguing that the standards themselves are procompetitive. In my prior in limine order, I held that while plaintiff may not argue that the use of sanctioning standards-based systems is anticompetitive, plaintiff may nevertheless offer limited evidence on how the standards came to be to the extent necessary to develop the narrative of its case. Defendants will be held to the same standard.

While defendants may not argue that the use of a sanctioning standards-based system is procompetitive as compared to other potential systems, like a promotion or relegation system, defendants may, however, explain the context in which the standards were developed and the reasons that the specific requirements of the standards, for example, the requirement that a Division I league contain a

minimum number of teams, were put in place. This n may include argument that requirements within the standards are procompetitive and, as the Second Circuit explained in its earlier decision in this case, may include limited information about the history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, and the purpose or end sought to be attained. And there I was quoting from the Second Circuit's decision at 883 F.3d at page 43. Obviously to the extent defendants stress the procompetitive nature of certain requirements of the standards, plaintiff will be allowed to rebut that theory with its own evidence.

Let me turn now to the second prong of Motion III, which seeks to preclude defendants from arguing that there should only be one league in each division as a procompetitive justification for denying plaintiff a Division I or Division II sanction.

Plaintiff initially characterizes this section of the motion as seeking to preclude defendants from arguing that there are procompetitive reasons to allow only one league in each division. Having seen no indication that defendants intend to make this argument, it is clear to me that plaintiff is more broadly seeking to preclude defendants from arguing that the sanctioning decisions were justified based on a fear of ruinous competition.

Defendants are correct that in the Circuit's prior ruling, it rejected plaintiff's argument that defendants' sanctioning decisions cannot be justified as preventing ruinous competition, financial disaster, or the evils of price cutting. And there that was at page 44 of the Circuit's decision.

The Circuit held that the arguments plaintiff again advances here are tied to cases where courts were confronted with per se illegal practices, but that in the sports standards context, arguments that a practice promotes stability and other procompetitive justifications still can be relevant.

The Circuit further explained that while an antitrust defendant cannot "justify anticompetitive arrangements by saying that an industry's special characteristics warrant them," in the context of a soccer industry historically prone to collapse, the free-rider and stability justifications do not rationalize anticompetitive effects, they evidence procompetitive ones.

So consistent with the Circuit's decision, I will not limit defendants' ability to argue the procompetitive effects of their decisions in the manner that plaintiff seeks.

Plaintiff's motion in this regard is, therefore, denied.

Let me turn now to the third prong of this motion, which seeks to preclude defendants from arguing that they applied the standards in good faith.

I also deny this section of the motion. If plaintiff characterizes U.S. Soccer's sanctioning decisions as having been made in bad faith at trial, defendants will be permitted to counter that argument. I note that plaintiff has not cited a single case in which a court actually precluded a defendant from arguing that it acted in good faith. Rather, each case that plaintiff cites stands only for the proposition that good intentions alone are not sufficient to defeat a Sherman Act claim. As defendants acknowledge in their opposition, they of course may not suggest to the jury that their good intentions alone are sufficient to defeat plaintiff's claims.

I'll now turn to the fourth prong of the motion, which seeks to preclude defendants from arguing brand protection as a procompetitive justification.

In this prong of their motion, plaintiff cites to no on-point authority to support its position, asking me to hold that defendants cannot argue that brand protection is a procompetitive justification for their application of the standards because they have not come forward with expert or other evidence to support that argument. I'm denying that request.

At summary judgment, Judge Cogan rejected plaintiff's argument that defendants did not have evidence to support the alleged procompetitive justifications for the standards, holding that the parties' evidence had created an issue of fact that the jury must determine at trial. I see no reason to disturb that determination at this stage. To the extent that defendants come forward with evidence or elicit testimony to support an argument that brand protection was a procompetitive justification for their application of the standards, they may do so. Plaintiff is free, of course, to rebut any such contention with its own evidence and testimony.

The fifth and final prong of this motion seeks to preclude defendants from introducing evidence of procompetitive effects in other markets not at issue here.

First, plaintiff is correct that any procompetitive benefit defendants offer as justification for their application of the standards must occur in the same market in which competition is being restrained. However, I credit defendants' assertion that the deposition designations and exhibits about which plaintiff is concerned will not be offered as evidence of procompetitive effects in the downstream markets that Judge Cogan already determined were not relevant to this case. Although the designations and exhibits at issue may not be offered for the purposes

that plaintiff identifies, they are admissible to the extent defendants demonstrate at trial that the evidence is relevant to establish the purposes defendants identify on page 5 of their opposition.

Let me turn now to Plaintiff's IV motion. That motion seeks to preclude evidence or argument that Traffic Sports made an improper payment to induce investors in a team to join NASL. I'm denying this motion, and I will allow defendants to introduce evidence and testimony, including Davidson's invocation of the Fifth Amendment, related to the alleged payment. I find that this evidence is relevant under Rule 401 and not unfairly prejudicial to plaintiff under Rule 403.

As I understand it, plaintiff's theory of the case is that it was a rapidly growing, successful league that was recruiting more and more teams to play under its purview because of that success until that growth was stopped in its tracks by defendants' alleged anticompetitive conspiracy. Defendants counter that plaintiff's failure was due to issues with the league, unrelated to U.S. Soccer's sanctioning decisions.

If plaintiff does intend to argue at trial, as it has in its papers thus far, that the team named in the motion joined NASL rather than another league because of plaintiff's success, defendants are permitted to counter

that narrative by introducing evidence of other reasons that team may have joined the league. This evidence may include the documentary evidence referenced in defendants' opposition to plaintiff's motion and any testimony, including any Fifth Amendment invocation, that Davidson gave on the topic.

In ruling on the parties' preliminary motions in limine, I found that defendants may play for the jury portions of Davidson's testimony, including portions in which he invokes his Fifth Amendment rights. I also found that an adverse inference against plaintiff based on Davidson's invocation will be trustworthy and should be provided in some form following the presentation of Davidson's testimony.

While I will not instruct the jury that they can infer from Davidson's invocation of the Fifth Amendment on this issue that the team joined the NASL rather than the MLS or the USL at least in part because of an improper payment, I will permit defendants to introduce the testimony as well as any related evidence in order to make its point. I find that the probative value of this evidence is not substantially outweighed by the danger of unfair prejudice to plaintiff. Plaintiff is free to rebut any evidence defendants put forward on this point.

Let me turn now to Plaintiff's V motion. There,

plaintiff seeks to exclude Rocco Commisso's personal tweets unrelated to the standards and sanctioning issues. I'm denying that motion.

I've reviewed the at-issue tweets and agree with defendants that they are significantly probative in terms of Mr. Commisso's bias and credibility, especially in light of his decision to tweet from an anonymous account. I am persuaded by the authority presented by defendants that bias of a witness is not a collateral issue. That is especially so here because the tweets relate to core issues in this case.

Although I credit plaintiff's argument that these tweets might be inflammatory, I disagree that the risk of unfair prejudice substantially outweighs their probative value. As just explained, their probative value is high. I accept defendants' argument that the tweets are especially probative because they give the jury the opportunity to juxtapose the tone and style of the tweets with the live testimony, which will aid the jury in assessing witness credibility.

For that same reason, I reject the argument that other evidence can be used to show bias. Plaintiff has not shown there to be a Rule 403 issue entitling it to such a remedy.

Let me turn now to Plaintiff's VI motion. That

motion seeks to exclude evidence of non-privileged discussions regarding NASL litigation strategy. I am granting this motion in part and denying it in part. I understand that this dispute concerns Exhibits 281 and 282. To the extent plaintiff intended for this motion to be broader, I think my ruling will be instructive as to the scope of the permissible evidence here.

To begin, I think both exhibits satisfy Rule 401's low relevance bar. I accept defendants' argument that the content of both emails is relevant to their central defense, namely that NASL failed because of mismanagement and other issues rather than defendants' alleged conduct.

The argument on Rule 403, however, is a closer call. I appreciate that references to litigation not pursued but related to this case may be both unfairly prejudicial and, more importantly here, confusing. I've reviewed the two exhibits in detail. I'm going to exclude Exhibit 281 because it is entirely litigation focused. I agree with plaintiff's argument that the probative value of this document is substantially outweighed by the risk of confusion, as jurors might discredit the claims in this litigation based on it.

I reach a different result with respect to Exhibit 282. Litigation may generally frame in that document the discussion by the owners, but the statements

included in Exhibit 282 have very high probative value. For example, Mr. Edwards's statement that "We must earn Division I status, not sue to get it," is a statement by a party opponent that effectively endorses defendants' central theory of the case. Its probative value is not substantially outweighed by any unfair prejudice or the risk of confusion because the theme motivating those two problems, the merits of antitrust litigation, is more marginal in this exhibit.

Let me turn now to Plaintiff's VII motion, and I'll also address Defendants' II motion.

So Plaintiff's VII motion seeks either a trial deposition or to exclude Scott Letellier for failure to disclose. I'm denying that motion.

I agree with defendants that Mr. Letellier was otherwise made known to plaintiff. Defendants' disclosure of "former members of the PSL Task Force" was sufficiently specific for plaintiffs to identify Mr. Letellier. This is evidenced by plaintiff's deposition notice served on him. And I don't credit plaintiff's argument that plaintiff chose not to go forward with that deposition only because defendants failed to disclose him. Because Mr. Letellier has otherwise been disclosed under Rule 26(e), no remedy is warranted. As I'll explain in a moment, even had there been a technical violation of Rule 26 here, I would not have

exercised my discretion to preclude the witness.

Let me turn now to the related Defendants' II motion. In that motion, defendants seek to exclude testimony of former Cosmos players Daniel Szetela and Carlos Mendez for failure to disclose or under Rules 402, 403. Because I'm applying the same factors but reach a different result than I did with the prior motion, let me explain my rationale.

I note at the outset that in plaintiff's opposition, it states that it has removed Mr. Mendez from its witness list, so this motion is moot as to him.

As to Mr. Szetela, plaintiff argues only halfheartedly that he was properly disclosed. Both sides agree that I must consider the following four factors in determining whether to preclude testimony. One, the explanation for failure to disclose. Two, the testimony's importance. Three, prejudice to the other party. And four, the possibility of a continuance.

Starting with the first factor, as I just indicated, I don't accept plaintiff's argument that its disclosure of "employees" of the Cosmos or "representatives of current and former NASL teams" suffice. Those lists, which presumably cover hundreds of people, are materially different in breadth from defendant's disclosure of the much smaller and much more easily-identifiable PSL Task Force.

Nor does the reservation of rights to identify more witnesses later save plaintiff. That would render Rule 26 a dead letter.

As to the second factor, I agree with defendants that Mr. Szetela's testimony is not very important. Plaintiff says he will testify to the importance of divisional sanctions and the desirability of being a player in D1 or D2, which is important to prove the relevant markets, according to plaintiff. Plaintiff also says he can testify "about the fact that NASL could compete with MLS on the field." At the outset, those topics appear to me to be marginal and far removed from the conspiracy allegations in this case. Furthermore, they look like issues for experts, as plaintiff provides me with no explanation for why this kind of testimony is needed to define the relevant markets in this case. Plaintiff's treatment of this issue is too cursory for me to find it sufficiently important.

Moving on, there would clearly be prejudice to defendants by allowing the witness to testify at trial. This concern is heightened by the unclear nature of his testimony, and I'm not persuaded by the fact that defendants have generally taken discovery on the issues on which the witness plans to testify. Defendants will still be ambushed by this specific testimony.

Finally, I don't believe there is sufficient time

for a continuance at this point. I don't think that there is time to depose the witness. I agree with defendants that to rush a deposition now would deprive them of the opportunity to seek out documents from the witness via third-party subpoena.

As all the factors support defendants, I will grant the motion to preclude Mr. Szetela.

This result is consistent with my prior ruling regarding Letellier. When you contrast this with Mr. Letellier, where the first three factors all cut against plaintiff -- one, defendants effectively disclosed him; two, his testimony goes to issues at the heart of the case; and three, any prejudice to plaintiff was caused by plaintiff's own failure to depose him when he was already noticed -- it becomes clear that these two circumstances are materially distinguishable.

In any event, I would also preclude Mr. Szetela's testimony under Rules 401 and 403. For the reasons already explained, plaintiff has not convinced me that this testimony is relevant to a claim in this case, and I agree with defendants that the risk of unfair prejudice and juror confusion by bringing in a player to testify about his firsthand experience substantially outweigh any marginal probative value of this testimony. Contrary to plaintiff's claim, it would especially create confusion about an

irrelevant player market.

So that addresses Defendants' Motion II.

Let me go back in order and now turn to Defendants' I. In that motion, defendant seeks to exclude testimony from Rishi Seghal as to matters over which NASL has asserted that his communications are privileged. This motion pertains to three categories of evidence. Category 1 is the meaning of and intentions behind NASL's legal agreements and its obligations. Category 2 involves communications with Traffic Sports and Team Holdings. And Category 3 involved communications with Douglas Kelley, an individual who was hired by NASL after the Traffic indictment.

As to this motion, I'm denying the motion in its entirety. As to Category 1, the legal agreements, I'm not convinced that we have a sword and shield issue here, particularly in light of plaintiff's recounting of the extensive testimony defendants took on the contractual obligations. I've reviewed the privilege log excerpts provided by defendants and do not think Seghal asserts a claim in his declaration that in fairness requires examination of the protected communications. In other words, plaintiff has not disclosed some communications for self-serving purposes, as it appears to me that Mr. Seghal is just providing testimony on issues that also may have

been discussed in a privileged context. In this sense, I don't find that there is support for defendants' broad understanding of waiver, which would risk gutting the privilege.

With regard to Category 2, I see basically the same issue with defendants' position regarding the communications with Traffic and Team Holdings. This issue is admittedly complicated due to Mr. Seghal's two-hatted role in the organization, but I don't think the fact that Mr. Seghal said that NASL on one side and Traffic and Team on the other side took different views of the relevant agreements, that that creates some broad subject matter waiver over all documents between NASL and Traffic and Team, especially when it is at least somewhat unclear what precise issues were under discussion in the privileged communications. As before, I don't see Mr. Seghal actually disclosing any other otherwise privileged communications such that this creates a generalized sword and shield issue, so I deny this portion of the motion, as well.

The third category related to Douglas Kelley communications for me is the easiest. Unlike with the other two categories, this issue was not precipitated by the Seghal declaration, but is rooted in his years-old deposition. I, therefore, agree with plaintiff that as a procedural matter, this branch of the motion is untimely and

I could deny it on that basis alone, as the time for raising discovery disputes has long past. In any case, I would deny the motion because defendant provides me with no authority suggesting that a disagreement between a client and counsel about the meaning of a non-privileged document necessarily waives privilege over all communications between the client and counsel.

So, like I said, I'm denying this Defendants' Motion I in its entirety.

Even though I'm denying the motion, I want to make clear that is in part because motions in limine are, by their nature, broad. As I said in my prior order, I may only exclude evidence when it is clearly inadmissible on all potential grounds. Plaintiff is forcing itself to walk a fine line by putting up its own lawyer as a central witness, and the mere fact that I'm not finding waiver today does not mean I will not find it based on the testimony presented at trial. So I am warning plaintiff to tread carefully on this issue. I certainly will not tolerate any attempt to abuse the privilege during the trial testimony.

Let me turn now to defendants' third motion. That motion seeks to exclude evidence and argument related to the proposed 2015 amendments to the 2014 standards. I am granting that motion.

Both parties agree that the proposed 2015

amendments to the standards were never adopted or applied to plaintiff. As such, I do not see how these amendments are relevant to a determination of, or probative of, whether the standards were drafted, modified, and applied to plaintiff in a way that harmed competition. Accordingly, I am not convinced that evidence related to the 2015 proposed amendment is relevant under Rule 401.

The Second Circuit has held that implicit in Rule 401's definition of relevance are two distinct requirements. One, that the evidence must be probative of the proposition it is offered to prove. And two, that the proposition to be proved must be one that is of consequence to the determination of the action. And there I was citing from *U.S. v. Kaplan* at 490 F.3d 120.

With this in mind, I note that plaintiff has not demonstrated that the proposed 2015 amendments, which were not adopted, had any bearing on or relationship to the sanctioning process in 2016 or 2017. And given that U.S. Soccer met regarding the proposed 2015 amendments to the standards multiple times before plaintiff had submitted its Division I application, I am not convinced that evidence related to the proposed 2015 amendments is probative of the proposition that the proposed amendments were designed to "raise the Division I requirements so that they were further out of reach for plaintiffs," as plaintiffs argue, or that

the proposed amendments are relevant as evidence of the conspiracy and of the anticompetitive intent and purpose of the defendants' application of the standards.

I am also persuaded by the sixth circuit's reasoning in the *Warrior Sports* decision, which is at 623 F.3d 281. In that case, the Sixth Circuit held that the proposed changes that the NCAA considered, but which never went into effect, could not "be challenged because they necessarily did not cause, nor did they threaten to cause, any injury," and that only the rule changes that actually took effect "matter for purposes of the antitrust analysis."

Accordingly, because I find that this evidence is not relevant, I will not allow plaintiff to introduce it at trial.

Defendants' fourth motion seeks to exclude evidence and argument characterized as related to corporate governance issues, such as an alleged conflict of interest violation, and to exclude all evidence and testimony related to the McKinsey report. I am granting this motion in part and denying it in part.

In his order on the parties' motion for summary judgment, Judge Cogan excluded all testimony on the irrelevant topic of corporate governance and held that NASL will not be permitted to suggest to the jury that defendants have violated any corporate governance rules. Judge Cogan

also explained that whether U.S. Soccer complied with good corporate governance practices is irrelevant to plaintiff's antitrust claims. My findings on this motion will be informed by that prior holding.

I have reviewed the exhibits provided to me as relevant to this motion, which are Plaintiff's 169, Plaintiff's 170, and Plaintiff's 461. Although Plaintiff's 169 and 461 contain governance-related discussion, that discussion, at least in part, specifically relates to the governance of the Professional League Standards Task Force and explicitly references the enforcement of the standards. Therefore, I will not exclude 169 or 461. Since defendants intend to assert at trial that the Professional League Standards Task Force acted without bias, plaintiff must be permitted to admit evidence that calls into question that neutrality or that points to potential issues with the procedures employed by the Task Force and its enforcement of the standards during the relevant period. This evidence is obviously relevant to plaintiff's claims.

However, Plaintiff's 170 is clearly more focused on general corporate governance of U.S. soccer as a whole, and in particular on committees that do not handle the enforcement of the standard, such as the Governance Committee. Although it briefly mentions the Professional

League Standards Task Force, it does so only in the context of a broader discussion about governance reform at U.S. Soccer. This is precisely the kind of evidence that Judge Cogan's order sought to exclude, and it is not relevant under Rule 401.

Accordingly, I will exclude Plaintiff's 170 and other similar evidence that relates to broader U.S. Soccer corporate governance issues rather than to specific issues with the task force charged with promulgating and enforcing the standards.

I am also excluding evidence and argument related to the McKinsey report. I find that the report, which I have reviewed in its entirety and is filed on the docket at Docket 287-8, is not relevant under Rule 401 and is precluded by Judge Cogan's ruling on corporate governance issues. I'm obviously aware that Judge Cogan previously determined, for purposes of summary judgment, that the report is a business record and that the quotes within it meet a hearsay exception. That does not, however, make the report admissible at trial. To be admissible at trial, it must also be relevant under Rule 401 and not substantially more unfairly prejudicial than probative under Rule 403.

As I already discussed, for evidence to be relevant under Rule 401, it must be probative of the proposition it is offered to prove and the proposition to be

proved must be of one that is of consequence to the determination of the action.

Plaintiff seeks to use the quoted statements from the McKinsey report at trial to demonstrate that U.S. Soccer's board decision-making "was influenced and biased by USSF's entanglement with MLS through both business and personal connections." However, none of the highlighted quotes relate to U.S. Soccer sanctioning decisions, MLS's role, if any, in the sanctioning process, or any entanglements that would have impacted the way U.S. Soccer decided to enforce the standards. Rather, the quotes relate more broadly to corporate governance issues, administrative issues, and U.S. Soccer's governance structure. They are wholly unrelated to U.S. Soccer's sanctioning process.

The main quotes that relate to MLS's role in U.S. Soccer governance states that "MLS has a stranglehold of U.S. soccer" and that "having MLS under the auspices of the federation is a challenge. It's political and paralyzing." These quotes are on a slide titled "Tension around scope of USSF remit suggests likely execution challenge."

Based on the lowercase "s" in the stranglehold quote, like defendants, I read that quote as referencing soccer in the U.S. generally, rather than the U.S. Soccer Federation. This is supported by the fact that references

to the federation in the deck either refer to it as "U.S. Soccer," with the "S" capitalized, or "USSF." For example, I'm referring to Slides 1, 8, 16, 28, 32, and 36. Indeed, the very slide that references the "stranglehold" refers to the federation as "USSF," all caps, which is Slide 37. Understood as a reference to soccer in the U.S. generally, this quote is of no relevance to plaintiff. This is reinforced by McKinsey's representative's testimony that the quote was referencing "tension between the professional side of soccer in the United States and amateur." And the quote about the challenge of MLS existing "under the auspices of the federation" is vague, with no clear indication of what the challenges are.

As such, I find that the report is not probative of a conspiracy between MLS and U.S. Soccer related to sanctioning decisions. As best, the report is probative of general corporate governance issues facing U.S. Soccer, which, as Judge Cogan has already found, are not relevant to the determination of this action. Accordingly, under Rule 401 and consistent with the summary judgment decision, I am excluding the McKinsey report.

I also note that even if I had found the McKinsey report to be relevant, I would nevertheless exclude it under Rule 403 because any minimal probative value it might have is substantially outweighed by the risk of confusing and

misleading the jury. I am not convinced that the statements that plaintiff proposes to put before the jury can be fairly attributed to U.S. Soccer board members, as plaintiff suggests, given that McKinsey's representative testified that it was not McKinsey's "practice to transcribe completely and verbatim comments made in interviews," and that McKinsey often paraphrased statements made by interviewees. And as previously stated, given the lack of clarity surrounding what specifically the quotes in the deck mean, I find that there is a high risk of confusing and misleading the jury.

Let me turn now to Defendants' V motion, which seeks to exclude evidence and arguments related to the 2018 U.S. Soccer election. I am granting this motion in part and holding a portion of it in abeyance.

As I already noted, Judge Cogan excluded all testimony related to corporate governance in his summary judgment order. I agree with defendants that in large part, evidence about this election pertain to internal governance issues and not specifically to the sanctioning process or prior sanctioning decisions. As such, it is irrelevant to the issues in this litigation and precluded by Judge Cogan's summary judgment order and by Rule 401.

Accordingly, of the exhibits the parties identify as relevant to this motion, I will exclude Plaintiff's 202,

Plaintiff's 439, and Plaintiff's 207, because they are not relevant to the issues in this litigation and instead pertain to corporate governance issues, such as the mechanics of the 2018 U.S. Soccer election. Any similar exhibits or testimony that have not already been identified for me fall under the purview of this decision.

However, with respect to Plaintiff's Exhibit 206, Ms. Carter's notes to herself taken as she endeavored to learn more about the standards, I'm holding my decision on that exhibit in abeyance. I do not necessarily see this document as exclusively pertaining to internal governance issues like the exhibits I have already discussed.

However, plaintiff will need to establish the trustworthiness of Ms. Carter's notes, which do not appear to be statements by a percipient witness, but rather notes taken during a conversation with others. At trial, I will allow plaintiff to attempt to develop a foundation for this document and make a case that the origins of the document are sufficiently Rule 403 proof that admitting it will not be misleading or confusing to the jury. Once plaintiff has endeavored to establish that foundation, I will determine during the trial whether or not the document is admissible. If plaintiff's effort to establish a foundation instead establishes that the document is more or less a summary of information about which Ms. Carter had no firsthand

knowledge, I will likely exclude it since it will be of very limited probative value, and that value will be outweighed by the substantial risk that admitting it could confuse or mislead the jury given that Ms. Carter was not involved in decisions related to the standards or sanctioning in 2016 and 2017.

Let me turn now to Defendants' VI motion, which seeks to exclude evidence and arguments related to MLS expansion fees. I am granting this motion.

Dr. Williams may not testify regarding the $500 million expansion fee that MLS received from the San Diego football club in 2023, and I will exclude any evidence or argument concerning that same fee. Dr. Williams may not testify on this topic because I am convinced by defendants' arguments on pages 20 to 21 of their motion that Dr. Williams neither disclosed this fee as a basis for his opinions nor relied on it in forming his opinions.

Beyond just Dr. Williams, I am also excluding any evidence or argument about the fee because given the temporal attenuation, I simply do not see how, under Rule 401, a 2023 MLS expansion fee is otherwise relevant. Even if the fee did have minimal probative value, that would be substantially outweighed by the risk of unfairly prejudicing defendants or confusing the jury under Rule 403.

Turning next to Defendants' VII motion, which

seeks to exclude evidence regarding women's soccer litigation, investigation, and standards changes. This motion is granted for now, and let me explain what I mean by that.

My prior order was clear that evidence concerning women's soccer formed just one part of one category of evidence, all of which represents just a tiny portion of the case. I also explained, in agreeing with defendants, that the evidence of other activities could be relevant by undercutting the notion that defendants worked to undermine other leagues or otherwise diminish competition in the lower markets. That is a narrowly-defined lane and I expect defendants to stay in it.

Because this evidence has low probative value, that value is substantially outweighed by the risk of confusion and unfair prejudice coming from the introduction of evidence about women's soccer that plaintiff wants to introduce. I think the risks of confusion and unfair prejudice are heightened because the evidence about the women's soccer litigation, investigation, and the standards change does not undermine the limited purpose for which I held that defendants could introduce the other activities evidence as defined in my prior order. And here, I actually think the risk of devolving into a side trial on the women's soccer litigation is high in no small part because it is

easier for a layperson juror to wrap his or her head around than the more complex antitrust claims.

That being said, I do caution defendants to tread carefully in this area. If they go beyond the bounds of my prior order, including by excessively pressing on the importance of their other activities, like women's soccer, I may be persuaded to find that they have opened the door to at least some of the evidence plaintiff now seeks to introduce. I'll again emphasize that I do not want to see a trial on those collateral issues. This trial is not about whether any party is good or bad.

And finally, Defendants' VIII motion, which seeks to prevent plaintiff from referring to U.S. Soccer and MLS broadly as "defendants" when referring to activities in which only one defendant was involved.

I'm not inclined to rule on this at the moment, and certainly I don't intend to waste time policing the parties' rhetoric at trial. Plaintiff should be clear about which defendant it is referring to at trial when making its arguments. If it does appear that plaintiff is conflating the two defendants improperly or if its rhetoric becomes misleading, then I will obviously admonish plaintiff in the presence of the jury as necessary. But I don't believe that I need to spend any time now prejudging that issue.

So I think that concludes my decision on the

various in limine motions filed by the parties, but I do have a few other administrative items that I want to deal with while I have the parties on the line.

The first involves the trial schedule. As the parties may recall, one of the issues that I had in terms of scheduling was a large criminal trial that was backing up at the end of your trial. But it now looks like that trial is going to completely plead out, and I'll know more -- I should have a definitive answer on that by early next week. So assuming that that case goes away, what I intend to do is to start the trial not on the 6th of January, but on January 13th. I think that's more fair for the jurors. I don't see any problem for the parties since you had this whole period of time blocked anyway, and that way there's not a break with having to take that Thursday and Friday off. That was a calendar issue on my part that came up after our conference. So I'm letting you know now that I'm likely going to move the start date of the trial from January 6th to January 13th, but I will let you know early next week when I'm certain of that.

Any questions on that issue?

MR. C. PEARSON: No, Your Honor.

THE COURT: Who was that, please?

MR. C. PEARSON: It's Clifford Pearson for the plaintiff.

No, Your Honor. Will that alter the pretrial hearing date?

THE COURT: No, we'll keep the conference date as is.

MR. C. PEARSON: Okay, great. Regarding the conference date, Your Honor, if I may just ask one question --

THE COURT: Who is that again?

MR. C. PEARSON: This is Clifford Pearson for NASL.

Regarding the Pretrial Conference date, to those traveling back to the West Coast, do you have an anticipated time period as to how long that's going to last?

THE COURT: What time is it scheduled for?

MR. C. PEARSON: 2 p.m.

THE COURT: 2 p.m.? I guess that depends on you, right? Hold on. Let me just pull up my calendar. Just give me one second.

I mean, if it helps the travelers, I can start that conference earlier. Why don't the parties meet and confer on that and then just reach out to Mr. Neptune, my deputy. The only thing I have is something mid-morning on a criminal matter, and I think some of you have already arranged with Mr. Neptune to sort of walk through that day for your technology people, but that can always be moved.

So I'm more than happy to accommodate the lawyers' schedules with travel. So just coordinate among yourself and let Mr. Neptune know and we'll make that so that you can get out of here earlier.

MR. C. PEARSON: Clifford Pearson again.

Thank you very much, Your Honor. And may I ask how long you're available to us to start? And then we'll talk among the parties.

THE COURT: Probably I can start at noon, because I think I have a criminal matter at 11:00. Given how much we've done already with in limine motions, given what you know already about my jury selection process, and I might as well sort of tell you, I've also been thinking that given that we'll be in January, in the midst of flu season, I'm probably going to opt for a jury of ten as opposed to eight, but I'm still giving that some thought. That doesn't really affect -- that just means that we have to qualify a panel of 16, which is not much different than to qualify a panel of 14.

So that's where my thinking is now. So that's just something for you to think about. I'm just worried if we're going to go three to four weeks right in the height of flu season, that people can start dropping off. So that's my thinking right now. But, I mean, I don't anticipate a lot more.

Let me get to my second point, because maybe that will inform how much needs to be done at that conference. I mean, there obviously appears to be a lot of pretrial work that the parties are still coordinating among themselves. And you said in the Joint Pretrial Order that you are not requesting a ruling on the objections and responses on your exhibit list and were working to narrow those disputes. I mean, I took a look at that exhibit list. It's actually not very helpful for me. There are, by my count -- let me just look -- 87 joint exhibits that I'm happy to pre-admit, and the more joint exhibits that you submit to me, I'm happy to pre-admit those so that at trial you can just start talking about them and publish them without any need to offer them for admission.

But there are literally hundreds, if not maybe 1,000 objections on the other probably 1,500 exhibits between plaintiffs and defendants total. And just as a simple matter of how many days and hours there are left between now and whatever that is, January 13th if that's when we start, I can't imagine how I'm expected to rule on those objections, right? I definitely have been, I think, compared to other civil cases, flexible in the amount of in limine briefing that I've allowed the parties. I'm not going to be entertaining more in limine motions. I mean, that's it.

So any other objections I'm going to resolve at trial. And I'm giving thought on how I'm going to allocate the time to resolve those objections, if they require sidebars, and which party is going to have the clock run against them for the objection. I haven't sort of thought about that yet. But I'm just trying to be as transparent as possible that the more time we spend during the trial hammering out objections -- and I'm more than happy to look at a document and say admitted or not admitted. I feel pretty comfortable doing that. But if we start requiring lengthy sidebars, then I'm going to start allocating time from your trial time to those sidebars. I've got to think about how I'm going to do that, but I'm certainly going to do that. So that's something for you to be thinking about.

MS. COLE: Your Honor, Eva Cole for NASL.

If I may, I mean, to the objections, just to give Your Honor a sense of what the parties have been doing and where we are on this, so we've been conferring to narrow the exhibit objections. We expect to exchange one of set of narrow objections by early next week. Our collective thinking was that then each side would wish to present kind of a very small number of key exhibit objection disputes to the Court for resolution in advance of the trial, and we hope to do that in a very streamlined way to allow it to be very efficient and we would hope to be able to accomplish

that relatively soon, if that would be amenable to Your Honor.

THE COURT: So, Ms. Cole, you're telling me you now want a third round, basically, of in limine practice?

MS. COLE: Well, it would really be very targeted on specific exhibits and it would be organized by, you know, the type of objection that we have. Just, you know, I'll give Your Honor an example. So there are some disputes, for example, about whether certain communications qualify as co-conspirator party admissions under 801. There are certain objections about whether defendants can use certain documents from Traffic's and Davidson's criminal cases, which our position is they have nothing to do with NASL and are limited by your Court's previous ruling on that. So those are the types of things that we thought would be actually efficient to handle in advance of trial.

THE COURT: And when you say "limited," what do you mean by "limited" and what am I going to see? Am I going to get another 20-page brief from each side?

MS. COLE: We do not have to do any briefing if Your Honor does not want that. We could just, you know, kind of present a chart in a streamlined fashion along with the set of exhibits that we would ask Your Honor to rule on in advance.

THE COURT: All right. You can do that if you --

since it's on the phone, you can't see my facial expression, but my facial expression is one of frustration, all right? So take that for what it's worth.

When do you plan to do this?

MS. COLE: We can confer with the other side, Your Honor, and let you know.

THE COURT: All right. So let me know when you plan to do this. And that, I guess, segues --

Yes? Who is that speaking?

MR. YATES: I'm sorry, Your Honor. It's Chris Yates from Latham & Watkins.

THE COURT: Yes, Mr. Yates?

MR. YATES: Defendants haven't agreed to the process that Ms. Cole just identified. I think that, you know, we've gotten a lot of guidance today regarding Your Honor's thinking on what is and is not likely to be admitted. And so I would propose the parties take a day, consider what Your Honor has ruled on, and then try to meet and confer and do what we can with the exhibits and try to move some more into the joint exhibit category, because I agree with Your Honor that my strong preference is to be able to publish things as quickly as possible.

The other thing I would say, Your Honor, just on pretrial is we're supposed to submit narrow deposition designations to Your Honor I believe tomorrow. I think, you

know, the parties would probably benefit, given today's in limine rulings, from a bit more time to submit those so that we can cut things that have been excluded by Your Honor's rules here today.

THE COURT: Mr. Yates, that makes perfect sense to me. Next Friday, is that good enough?

MR. YATES: That's fine. We could probably even do it Wednesday, but if --

THE COURT: Friday's fine.

MR. YATES: Perhaps Friday is safer.

THE COURT: That was going to be my next point, which is if the dispute over deposition designation looks anything like the exhibit list, that's going to also present a huge problem. In any event, when you do present me with the designations, if you could provide -- I'm not sure we've talked about this before -- but if you could provide me with three hard copy sets in color so I could see them, and then also do electronic. But just as courtesy copies, provide the disputes.

I don't need anything that the parties have agreed to, unless you think I need to see it for context and it makes sense to print it that way, otherwise I would just want to see what you are disputing. But I'll leave that to your best judgment in terms of how many trees to save.

Any questions on that?

MR. YATES: This is Chris Yates.

Thank you, Your Honor.

THE COURT: Any questions on that?

All right. So I've looked at your preliminary instructions. I'm telling you now that my preliminary instructions are not going to do anything close to what either side is asking for in terms of explaining the law. I will use some version of your summary of the case and try to be as anodyne and neutral as possible. But I am not going to go into things like the purpose of the Sherman Act and -- I think in all the cases you cited, both sides, to me on this, I don't think any of those were from a Court giving that as a preliminary instruction. If I misread that, let me know, but I think everything you were giving me were final jury instructions, which I obviously will consider for the final jury instructions.

But for the preliminary instructions, my preliminary instructions are pretty anodyne and neutral about the case, and I'm just telling the jury basically what they're going to be expecting and that's it. So don't expect my preliminary instructions to delve into the law here in any respect.

Then with respect to the voir dire questions, I've looked at those. I am going to accept some of those. I'm not sure yet what those are. I normally don't share that

with the parties, but let me see where they are and when, and then if I share them, obviously I'll share them with everyone.

Let me just look at my notes to make sure there was nothing else.

I think that was it. Obviously to the extent you need to submit any orders for whoever's going to be in court with electronics and computers and stuff, just try to get that in as early as possible and I'll turn that around so there are no logistical issues.

Anything else while you have me? And identify yourself just so the reporter knows, please.

MR. C. PEARSON: Clifford Pearson.

Nothing, Your Honor.

THE COURT: Okay.

MR. YATES: Chris Yates.

Nothing, Your Honor. Thank you for your time.

THE COURT: Mr. Ruskin?

MR. RUSKIN: Nothing, Your Honor. Thank you.

THE COURT: So tomorrow I'm getting -- what am I getting from you tomorrow? Or is everything now pushed?

MR. YATES: Your Honor, Chris Yates.

I believe it probably makes sense to push it to next Friday and then we'll get you the narrowed -- further narrowed deposition designations that comply with the orders

here today.

THE COURT: No, that's fine. But were proposed final jury instructions due tomorrow as well, and the proposed verdict sheet?

MR. YATES: Chris Yates.

Yes, Your Honor.

THE COURT: Is that still on track?

MR. YATES: Chris Yates.

I believe so, Your Honor. You know, certainly I think we can submit those tomorrow so Your Honor can begin looking at them.

THE COURT: Okay. That would be helpful. Very good.

All right. Thank you, everyone. Have a good day.

(Matter adjourned.)

* * *

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/ Kristi Cruz

Kristi Cruz RMR, CRR, RPR
Official Court Reporter